IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Crl.Rev.Pet.No. 845 of 2000()

CC.482/96 JUDICIAL 1ST CLASS MAGISTRATE, KOLENCHERRY.
CRA.310/1999 of Ivth ADDL.SESSIONS COURT, ERNAKULAM .
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REVN. PETITIONER: APPELLANT/ ACCUSED

STEPHEN, S/O.JOSEPH,
CHELODATH HOUSE, POOTHRIKKAKARA,
AIKARANAD SOUTH VILLAGE, KOLENCHERRY.

BY ADV. SRI.T.S.RAJAN

RESPONDENT: RESPONDENT/ COMPLAINANT

STATE OF KERALA, REP.BY
THE SI OF POLICE, PUTHENCRUZ,
ERNAKULAM DIST.

BY ADV. PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.RP. NO.845/2000

ORDER ON CRL.MP. NO.606/01,4480/2000 IN CRL.RP.845/2000

DISMISSED

03.08.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.A. TO JUDGE

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K.R.UDAYABHANU, J

Crl.R.P.No.845 of 2000

Dated this the 3rd day of August, 2007

O R D E R

The revision petitioner is the first accused who stands convicted for the offence under Section 381 read with Section 34 IPC and sentenced to undergo R.I. for one year and to pay a fine of Rs.1,000/- and in default, to undergo simple imprisonment for three months.

2. The prosecution case is that the revision petitioner/ accused who is an employee of Synthite Industrials & Chemicals Ltd., Kadayiruppu, committed theft of 550 kgs. of (worth Rs.19,600/-) pepper from the godown of the above industry on 14.3.1995 at 4.00 a.m.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 14, Exts. P1 to P10(a) and MOs'1 to 11.

4. The prosecution witnesses, i.e., PWs' 1, 3 to 8 and 10 were treated as hostile. PW2, the Materials Manager of the company, rendered the FIS on 29.3.1995. The accused was

arrested on 15.11.1995 and the recovery was effected on the same day. The court below did not rely on the Section 27 recovery as alleged from the shops of PWs' 5, 6 and 8. The version of the above hostile witnesses is that within few days of the reporting of the theft, the MOs' were seized from their shops and kept at the respective shops itself and subsequently after the arrest of the accused formal recovery was effected. In the circumstances, the courts below did not treat the recovery as the recovery under Section 27.

5. All the same, the version of the above witnesses as to the fact stated by them that the accused sold varying quantities of pepper to the above shops stood proved, i.e., 28.200 kgs. at the shop of PW5, 198 Kgs. at the shop of PW6 and 39 kgs. at the shop of PW8. Further, 291 kgs. of pepper was recovered on search conducted in the house of the accused which has been proved by PW13, the Asst. Sub Inspector, who detected the search. PW12, an employee of a company, has proved the recovery. PW3, the mother of the accused, did not support the prosecution case in in this regard. The testimony of PW12 and 13

which stands not discredited. The evidence of PW2 that the seized commodity is Sreelankan pepper and that it can be distinguished from Indian pepper was relied on considering the expertise of PW2 who is post graduate in Botany. Further more, the accused was absconding for a considerable period up to 15.11.1995 till when he was arrested. In the light of above circumstances, I find that no interference is called for in the findings of the court below. The conviction is confirmed.

6. Counsel for the revision petitioner has pleaded for leniency pointing out that the accused was so far facing the ordeal of criminal proceedings for more than 12 years and that he is completely devastated and that he has two children who are afflicted with cancer and under treatment and that the income of the accused is the sole source for the family. It is also pointed out that the entire stolen articles were recovered. In the circumstances and considering the long delay, the sentence is modified to imprisonment till the rising of the court and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for three months. The revision petitioner is granted two months'

time to remit the fine amount. He shall appear before the court below on 8.10.2007.

The criminal revision petition is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl